

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**



# 74-1098

To be argued by  
OSMOND K. FRAENKEL

In The  
**United States Court of Appeals**  
For The Second Circuit

UNITED STATES OF AMERICA,

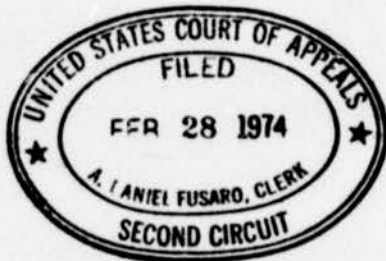
*Appellee,*

vs.

THOMAS OWENS,

*Appellant.*

## APPELLANT'S BRIEF AND APPENDIX



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To be argued by  
Osmond K. Fraenkel, Esq.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X

UNITED STATES OF AMERICA,

Appellee

Docket No. 74-1098

v.

THOMAS OWENS,

Appellant

-----X

BRIEF FOR APPELLANT

This is an appeal from a judgment of conviction on two counts after trial before Judge Ward and a jury, resulting in concurrent jail sentences of seven years with three years additional probation (S.M. 743, 744).

THE ISSUES

Did the Court below err in refusing to dismiss the conspiracy count?

Did the Court below err in receiving evidence against appellant a package of narcotics taken from defendant Young?

STATEMENT OF THE CASE

The indictment (A. 5) charged violation of the

narcotics laws in seven counts against five persons: Heywood Hyman, William Linzy Washington, Sandra Thompson, Alton Young, and appellant. The first three pleaded guilty (A<sub>2</sub>, 4). Of these, Washington testified for the prosecution (S.M. 225) and Thompson for the defense (S.M. 451).

The prosecutor, in his opening statement, claimed that there was a conspiracy to distribute cocaine and heroin and that appellant was the source of the cocaine, that Hyman and Washington found the customers, and Thompson carried the packages (S.M. 54). To establish his claim the prosecutor called a Customs patrol officer, Carliese Gordon (S.M. 67, 68). After testimony about dealings with Hyman and Young, he first mentioned appellant as present at Teller Avenue and 168th Street in the Bronx on May 7, 1973 with Sandra Thompson (S.M. 92, 93). They left (S.M. 94), returned about half an hour later (S.M. 95) and went into the building followed by Hyman who, in a few minutes, came out, gave the witness a bag containing a white powder, and received \$2,100 (S.M. 96). That was the only evidence connecting appellant with this transaction. The package was tested and was cocaine (S.M. 97). The agent testified that he had not seen appellant handle the material (S.M. 100).

The next episode was on May 15th and took place at Linzy's Barber Shop, 146 Hamilton Place in Manhattan (S.M. 101). This was owned and operated by Washington (S.M. 225). There



the witness found Washington and appellant. He testified that appellant asked him how much he wanted (S.M. 102).

On May 21st the agent again went to the barber shop (S.M. 105) and, on instruction of Washington, Hyman took the witness to Snookie's bar at 133rd Street and Seventh Avenue in Manhattan where he received a package that was found to be opium (S.M. 109). But appellant was not in any way involved in that transaction. The evidence was received against him subject to connection (S.M. 116).

On May 30th the witness drove to the Teller Avenue house with Washington (S.M. 119). After Washington had gone into the building and come back (S.M. 120) there was discussion about price, after which appellant came down to the car in which the witness was sitting. And the witness testified that appellant told him that the price of one ounce of dope was \$1500 and that it could be cut four times (S.M. 121). The next day the witness went to the barber shop where he met appellant and Miss Thompson (S.M. 122). There appellant told the agent that he would give the package to Miss Thompson (S.M. 122) and, later that day (S.M. 123), she returned and gave him the package (S.M. 124).

That is the substance of the case against appellant.

The Court below received in evidence against appellant over objection of his counsel a package of narcotics taken from defendant Young at the time of his arrest which was marked Exhibit 21-C (S.M. 370-371, 404, 406, 409).

POINT I

THE COURT BELOW ERRED IN NOT GRANTING  
APPELLANT'S MOTION FOR A DIRECTED  
VERDICT AS TO THE CONSPIRACY COUNT.

Count I of the indictment (A5,6 ) charged a conspiracy to deal in narcotics by appellant with Hyman, Washington, Thompson and Young. In his summation the prosecuting attorney correctly pointed out that appellant and Young were there charged with conspiring with each other (S.M. 622). We submit there was not sufficient evidence to link appellant with Young to justify submitting this count to the jury.

There is not a word in the long record that connects appellant and Young except the testimony of the police officer Kuramoto that he saw them on one occasion around Snookie's bar "engaged in a short conversation" with Miss Thompson (S.M. 391).

That is not enough (see Causey v. United States, 352 F.2d 203, United States v. Kampinsky, 373 F.2d 429, and Roberts v. United States, 416 F.2d 1216).

Appellant was not connected with the two episodes in which Young was a participant (see S.M. 85-87, 106-108). Young was not involved with any of the episodes in which appellant was a participant (see S.M. 93-96, 101-104, 118-124). There just isn't anything to justify a finding of an illegal agreement between appellant and Young.

We should point out that we are not here arguing



that there was a variance because two conspiracies were involved, not one as charged in the indictment. Cases such as Berger v. United States, 295 U.S. 78 and Blumenthal v. United States, 322 U.S. 539, are therefore not relavent.

Moreover, this is not a case like those in which it was apparent that for the basic conspiracy to function there had to be many participants not necessarily known to each other. Here, at most, appellant might have supposed that the people he dealt with, Hyman and Washington, had other sources of supply, but those sources were in no way connected with his own participation and were in no way necessary to it.

What we claim is that there was a total failure to prove the charge made, namely, that there was a conspiracy between appellant and Young. To convict in such a case is a denial of due procedd. Vachon v. New Hampshire, 42 L.W. 3403, Thompson v. Louisville, 362 U.S. 199, 206, Cf DeJonge v. Oregon, 299 U.S. 353, 362, and Cole v. Arkansas, 333 U.S. 196, 201.

Count I should have been dismissed.

## POINT II

### EXHIBIT 21-C WAS ERRONEOUSLY RECEIVED AGAINST APPELLANT

On June 22nd defendant Young was arrested by New York City police officer Drucker at Snookie's bar and taken

to 26 Federal Plaza where he was searched (S.M. 370). A packet was removed from his back pocket which contained cocaine and was marked Exhibit 21-C for identification (S.M. 371).

When this was offered in evidence (S.M. 404) appellant's attorney objected on the ground that the material was not connected with appellant (S.M. 406). The Court overruled the objection (S.M. 409) on the ground that there had been some evidence about a June 21st transaction that fell through (S.M. 408) and that the conspiracy continued until the arrest of Young (S.M. 409).

The testimony about the June 21st transaction involved Washington who said that appellant would arrive soon (S.M. 146). But there is no testimony that he did. The deal fell through because Washington wanted the money before he would get the package (S.M. 148). A motion by appellant's attorney to strike this as to him was overruled (S.M. 148).

The fallacy of the Court's ruling with respect to Exhibit 21-C is the supposed connection of Young with appellant. In fact, Young had nothing to do with the abortive June 21st negotiation (see S.M. 146-148), nor was he in any way involved in the other episodes in which, according to Gordon, appellant was involved (see S.M. 93-96,

101-102, 118-124). And appellant was not involved in the two episodes in which Young was a participant (see S.M. 85-87, 106-108). Young was not in the first batch of photographs (Exhibits 9-14, S.M. 383) which police officer Kuramoto took (see S.M. 384). The only testimony that puts appellant and Young together at any time is that of this police officer. He said that on May 31st he observed them both around the area of Snookie's bar (S.M. 389-391) and that at one point Miss Thompson engaged in a short conversation with them (S.M. 391). Photographs of the events were received in evidence as Exhibits 15-22 (S.M. 391, 393). And later a videotape was also admitted (Exhibit 23, S.M. 396, 397) and shown to the Court and jury.

So the only link between appellant and Young is that they both used Hyman for their own separate purposes and that on one occasion they talked to each other in a bar. Surely that is not enough to establish that they conspired together. And absent such a conspiracy, the material taken from Young should not have been received against appellant.

#### CONCLUSION

The conviction should be reversed and a new

trial ordered, or at the least the conspiracy count should be dismissed and the case remanded for resentencing (see United States v. Adcock, 487 F.2d 637, 640).

Respectfully submitted,

IRA I. VAN LEER,  
Attorney for Appellant

OSMOND K. FRAENKEL  
Of Counsel



DOCKET ENTRIES  
JUDGE WARD

1a 73 CRM. 72 C

TITLE OF CASE

THE UNITED STATES

ATTORNEYS

For U. S.: 264-6448

Robert E. Hemley

For D. C. WASHINGTON 201 2  
N.Y.C. 524-6656

vs.

1) HEYWOOD HYMAN (cts. 1 thru 6)

2) WILLIE WASHINGTON (cts. 1 & 2)

3) THOMAS OWENS a/k/a Bubba (cts. 1 & 7)

4) ALTON YOUNG (cts. 1 & 4)

5) SANDRA THOMPSON (cts. 1 & 7)

For Defendant:

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

DATE

NAME

RECEIVED

DISBURSED

Fine,

Clerk,

Marshal,

Attorney,

Commissioner's Court,

~~Salaries~~ 21:812,841(a)(1) & 8/1

(b)(1)(A) ti. 18 sect. 2

poss. with intent to dist. Cocaine (cts. 2, 3 & 5) schedule I

heroin (cts. 4, 6 & 7) schedule II) & Ti. 21:846 Conspiracy so to do. (ct. 1)

SEVEN COUNTS

DATE

PROCEEDINGS

10-10-73 Filed Indictment. (This matter is related to 73 Cr 625)

10-20-73 Filed HEYWOOD HYMAN-Filed Govts Bill of Particulars.

10-20-73 Filed HEYWOOD HYMAN-Affdvt in response to joint omnibus motion of defts Hyman & Thompson.

10-20-73 Filed HEYWOOD HYMAN-Filed affdvt in response to omnibus motion of deft Thomas Owens a/k/a Bubba.

10-20-73 Filed Govts Memorandum of law as to deft Heywood Hyman.

Cont'd. on page 2

A



DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEPENDANT
8-20-73	Defts. HEYWOOD HYMAN, ALTON YOUNG AND SANDRA THOMPSON (atty. present) Pleads NOT GUILTY.		
	Defts. WILLIE WASHINGTON, THOMAS OWENS. Court directs plea of not guilty. All defts, bail cont'd. (from indictment 73 Cr. 625) WYATT, J.		
8-28-73	WILLIE WASHINGTON Filed notice of appearance for the		
	deft by Robert P. Brown, 401 Broadway, N.Y.C. Tel: 524-0656		
8-28-73	WILLIE WASHINGTON - Filed affdvt of Robert P. Brown.		
9-5-73	THOMAS OWENS - Filed Notice of Appearance for the deft. by		
	IRA I. VANLEER, 132 Nassau Street, NYC 10038 Tel: MO 2-1596		
7-23-73	THOMAS OWENS = Filed affdvt & notice of motion to inspect Grand Jury minutes, etc.		
7-3-73	HEYWOOD HYMAN = Filed affdvt & notice of motion to Dismiss, etc. Ret. 8-7-73		
8-3-73	SANDRA THOMPSON = Filed affdvt, and notice of motion.		
10-10-73	THOMAS OWENS = Filed memo endorsed on defts filed 7-23-73 to inspect Grand Jury Minutes. The Deft have made omnibus motions to inspect grand jury minutes are denied. The request for discovery of evidence and for bills of particulars are denied except as consented to by the government. --- WARD, J.		
10-10-73	HEYWOOD HYMAN = Filed memo endorsed on defts motion filed 7-30-73 to Dismiss, etc. Ret. 8-7-73. The Deft have made omnibus to inspect grand jury minutes, to dismiss, are denied. The requests for discovery of evidence and for bills of particulars are denied except as consented to by the Government. --- WARD, J.		
10-10-73	SANDRA THOMPSON = Filed memo endorsed on defts motion filed 8-2-73. The Deft has made omnibus motions to inspect grand jury minutes, and to dismiss indictment, at this time are denied. The requests for discovery of evidence and for the bills of particulars are denied except as consented to by the Government. --- WARD, J.		
11-12-73	WILLIE WASHINGTON = Deft. (with atty. present) withdraws plea of Not Guilty and pleads Guilty to Count 2. P.S.I. Ordered. Sentenced date: January 4, 1974. 9:30 AM. Bail of \$2,500. P.B.B. continued. WARD, J.		

DATE	PROCEEDINGS
12-4-73	ALTON YOUNG= Filed notice of appearance by Henry K. Chapman. 335 Broadway, New York City, NY 10013 Tel: 925-2280.
12-3-73	HEYWOOD HYMAN= Filed Pltffs Affidavit in the matter of the Application for Warrant to Apprehend Deft as a Material Witness.
12-3-73	HEYWOOD HYMAN= Filed Memo Endorsed on pltffs Affidavit filed 12-3-73. Deft remanded. SO ORDERED -- WARD, J.
11-29-73	HEYWOOD HYMAN= With Atty, Roland Thau, present, withdraws plea of NOT GUILTY and pleads GUILTY to Ct. 1 & 4 - P.S.I. ordered. Sentence date 1-11-74 at 9:45 AM. Bail of \$2,500. P.R.B. continued. -- WARD, J.
12-3-73	THOMAS OWNES= Deft. with Atty Ira Van Leer present, withdraws plea of NOT GUILTY and pleads GUILTY to Ct.1. Plea withdrawn.
12-3-73	SANDRA THOMPSON= Deft, with Atty Sheldon Cohen present, withdraws plea of NOT GUILTY and pleads GUILTY to Ct.7. P.S.I ordered. Sentence date 1 4-73, \$500. P.R.B. continued.-- WARD, J.
12-3-73	Jury trial vs Deft's OWNES and YOUNG begun. Deft. HYMAN produced on a material witness warrant. Bail increased to \$50,000. cash or surety. REMANDED in lieu of bail. -- WARD, J.
12-4-73	Trial continues.
12-5-73	Trial continues. Juror #4 excused. Alternate Juror #1 now Juror #4.
12-10-73	Trial concluded. Jury deliberating.
12-10-73	HEYWOOD HYMAN= Deft. with Atty, Jos. J. Zedrosser, Legal Aid, present. \$50,000. bail as a material witness exonerated on motion of Co 't. Bail set for \$2,500 increased to \$7,500. cash or surety pending sentence. REMANDED. Motion that Legal Aid be relieved of its duty granted. New CJA-23 made out. Legal Aid relieved and Maurice Nesson-919 3rd Ave, NYC, 10022 - Tel:688-1100, appointed to represent Deft from this time forward.--WARD, J.
12-10-73	Deft's OWEN & YOUNG - Verdict GUILTY as charged. OWEN guilty on Cts. 1 & 7. YOUNG guilty on Cts. 1 & 4. Bail for each Deft. (OWEN & YOUNG) increased to \$25,000. P.R.B. secured by \$2,500. to be paid within 48 Hours. Each Deft. to sign in once a week on Thursdays at 3 PM in the reception area in U.S. Atty office, Rm 450. P.S.I. ordered. Sentence date 1-11-74 at 2 PM.--WARD, J.
12-11-73	Filed Gov't Memorandum of Law Re Admissibility of the Hearsay Statements of Co-Conspirators.
12-11-73	HEYWOOD HYMAN= Filed CJA-23 - Financial Affidavit.
12-11-73	HEYWOOD HYMAN= Filed pltffs Notice of Readiness for Trial on or after 12-3-73.
12-12-73	ALTON YOUNG= Time to pay Bail extended to Friday, Dec 14, 1973 @ 5:00 PM--WARD, J.
12-13-73	THOMAS OWENS= Time to pay Bail extended to Friday, Dec 14, 1973 @ 5:00 PM--WARD, J.

CONT'D ON Page #4



DATE	PROCEEDINGS
1-11-74	<p>NETWOOD HYMAN - Filed Judgment and Commitment. It is Adjudged that the Deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of EIGHTEEN (18) MONTHS on Ct. 1, said commitment to be followed by a THREE (3) YEAR mandatory special parole term; EIGHTEEN (18) MONTHS on count 4 to be followed by a THREE (3) YEAR mandatory special parole term. Counts 1 and 4 to run concurrently with each other. Deft shall become eligible for parole under Title 18, U.S. Code, Sec. 4208(a) at such time as the Bpard of Parole may determine. The court recommends commitment to Allenwood Federal Correction Institute if administratively feasible.</p> <p>Counts 2,3,5, and 6 dismissed on motion of deft's counsel with the consent of the Government. -WARD, J.</p>
1-11-74	<p>THOMAS OWENS - Filed Judgment and Commitment. It is adjudged that the Deft is hereby committed to the custody of the Atty General or his authorized representative for imprisonment for a period of SEVEN (7) YEARS on Ct. 1 to be followed by a THREE (3) YEAR Special Parole Term and SEVEN (7) YEARS on Ct. 7 to be followed by a THREE (3) YEAR Special Parole Term. Count 7 to run concurrently with the sentence on Count 1. REMANDED - WARD, J.</p>
1-17-74	<p>THOMAS OWENS - Filed deft's NOTICE OF APPEAL via Atty Leer. Mailed copies to Deft and U.S. Atty.</p>
1-28-74	<p>Filed transcript of record of proceedings dtd: 3-5 and 10-73.</p>

W. J. Ward  
U.S. District Court  
District of Columbia

INDICTMENT

5a

FILE  
USA-55-508 - IND./INF. (Conspiracy to distribute and possess with  
ed. 5/1/71 p. 1 intent to distribute narcotic drug.)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, :

-v- :

Heywood HYMAN :  
Willie WASHINGTON :  
Thomas OWENS @ "BUBBA" :  
Alton YOUNG :  
Sandra THOMPSON :  
:

Defendant s. :  
-----X

Indictment

73 Cr.

The Grand Jury charges:

1. From on or about the 1st day of April, 1973  
and continuously thereafter up to and including the date of  
the filing of this indictment, in the Southern District of  
New York,

Heywood HYMAN  
Willie WASHINGTON  
Thomas OWENS @ "BUBBA"  
Alton YOUNG  
Sandra THOMPSON

the defendant<sup>s</sup> and others to the Grand Jury unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendant<sup>s</sup> unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact nature of which being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.



Indictment

7a

U.S. - p.2 - IND./IN. (Conspiracy to distribute and possess with intent to distribute narcotic drugs.)  
5/1/71

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about the 10th day of April 1973, Willie WASHINGTON delivered a quantity of cocaine to a person in the Bronx, New York.

2. On or about the 12th day of April 1973, Heywood HYMAN delivered a quantity of cocaine to a person in New York, New York.

3. On or about the 16th day of April 1973, Alton YOUNG delivered a quantity of heroin to a person in New York, New York.

4. On or about the 31st day of May, 1973, Thomas OWENS A "BUBBA" had a conversation with a person in New York, New York concerning the sale of heroin.

5. On or about the 31st day of May 1973, Sandra THOMPSON delivered a quantity of heroin to a person in New York, New York.

(Title 21, United States Code, Section 846).

Indictment

8a

SECOND COUNT

The Grand Jury further charges:

On or about the 10th day of April, 1973 in the Southern  
District of New York,

Heywood HYMAN  
and  
Willie WASHINGTON

the defendants, unlawfully, intentionally and knowingly  
did distribute and possess with intent to distribute a Schedule II  
narcotic drug controlled substance, to wit,  
approximately 8.4 grams of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1)  
and 841 (b)(1)(A); Title 18, United States Code Section 2)

Indictment

9a

THIRD

COUNT

The Grand Jury further charges:

On or about the 12th day of April, 1973  
in the Southern District of New York,

Heywood HYMAN

the defendant, unlawfully, intentionally and knowingly did  
distribute and possess with intent to distribute a Schedule II  
narcotic drug controlled substance, to wit,  
approximately 23.1 grams of cocaine

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841 (b)(1)(A) 1.

Indictment

10a

FOURTH COUNT

The Grand Jury further charges:

On or about the 16th day of April, 1973 in the Southern  
District of New York,

Heywood HYMAN  
and  
Alton YOUNG

the defendants, unlawfully, intentionally and knowingly  
did distribute and possess with intent to distribute a Schedule II  
narcotic drug controlled substance, to wit,  
approximately 28.1 grams of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and  
841 (b)(1)(A); Title 18, United States Code, Section 2).

Indictment

11a

FIFTH COUNT

The Grand Jury further charges:

On or about the 7th day of May, 1973

in the Southern District of New York,

Heywood HYMAN

the defendant , unlawfully, intentionally and knowingly did  
distribute and possess with intent to distribute a Schedule II  
narcotic drug controlled substance, to wit,  
approximately 101.8 grams of cocaine.

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841 (b)(1)(A) ).



Indictment

12a

SIXTH COUNT

The Grand Jury further charges:

On or about the 21st day of May, 1973  
in the Southern District of New York,

Heywood HYMAN

the defendant , unlawfully, intentionally and knowingly did  
distribute and possess with intent to distribute a Schedule I  
narcotic drug controlled substance, to wit,  
approximately 15.5 grams of heroin

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841 (b)(1)(A) )

100-527A - IND/INF - DIST. Ct. Southern Dist. N.Y. (Succeeding Count)  
v. 5-27-72

Indictment

13a

SEVENTH COUNT

The Grand Jury further charges:

On or about the 31st day of May 1973 in the Southern  
District of New York,

Thomas OWENS @"BUBBA"  
and  
Sandra THOMPSON

the defendants, unlawfully, intentionally and knowingly  
did distribute and possess with intent to distribute  
a Schedule I narcotic drug controlled substance, to wit,  
approximately 25 grams of heroin

(Title 21, United States Code, Sections 812, 841(a)(1)  
and 841(b)(1)(A); Title 18, United States Code, Section 2)

PAUL J. CURRAN  
United States Attorney

Foreman

EXTRACTS FROM MINUTES  
Kuramoto-direct

14a  
04

1 GWW45

2 trial.

3 Q What did you do with it?

4 A We then delivered it to you at this building.

5 Q Thank you very much.

6 MR. HEMLEY: I have no further questions of  
7 this witness, your Honor.

8 THE COURT: Perhaps we will take a moment  
9 with the jury here. Can we perhaps move the television  
10 machine, the videotape machine and the cover from across  
11 the box?

12 MR. HEMLEY: May I get some assistance?

13 THE COURT: Indeed. YOU have no more need  
14 for the equipment?

15 MR. HEMLEY: No.

16 THE COURT: Let me ask defense counsel if  
17 they need it before I take it down. Mr. Van Leer?

18 MR. VAN LEER: No, your Honor, I don't need  
19 the equipment..

20 MR. CHAPMAN: I don't.

21 THE COURT: Then we can just take it down.

22 (Pause)

23 MR. HEMLEY: Your Honor, I might say at this  
24 time before the cross-examination of Patrolman Kuramoto  
25 that the Government offers Exhibit 12-C in evidence.

1 CWw46

Kuramoto

2 THE COURT: Are there any objections, gentle-  
3 men, to 12-C?

4 MR. CHAPMAN: I object to it, your Honor. I  
5 can give you my reasons.

6 THE COURT: At the side bar while the men are  
7 removing the equipment.

8 (At the side bar)

9 MR. CHAPMAN: This is the package allegedly  
10 taken from my client's hip pocket.

11 THE COURT: Allegedly incident to arrest?

12 MR. CHAPMAN: Incident to arrest. I am not  
13 talking about the search. The new Section 840, et. seq.  
14 does not make it a crime to possess unless it is with the  
15 intention of distributing it. That's the specific verbiage  
16 of the statute. There is nothing here to show that this  
17 was part of a conspiracy with any party. In fact, as the  
18 evidence was developed it was said that Owens supplied the  
19 cocaine and my client is alleged to have supplied the  
20 heroin. This is cocaine which is, according to the analysis,  
21 traces of undetermined quantity. It is unconceivable that  
22 that amount would be held for the purpose of distribution.  
23 Unless it is shown it is held for distribution it is not  
24 admissible evidence.

25 MR. HEMLEY: May I be heard?



1  
2 THE COURT: When counsel is finished.

3 MR. HEMLEY: I am sorry.

4 MR. VAN LEER: Let me make my comment. My  
5 objection is it has no relationship to my client, the fact  
6 it was allegedly in his possession when he was arrested  
7 and in no way connected to my client.

8 MR. HEMLEY: I will respond first to Mr. Chap-  
9 man. The Criminal Law Section 844 of Title 21 makes it  
10 a crime to possess any narcotic substance for whatever  
11 use of any nature whatsoever. Section 841, which is  
12 the section that Mr. Young is alleged to have violated and  
13 conspired to violate, makes it a crime to possess a nar-  
14 cotic substance with the intent to distribute it. The  
15 quantity and the fact that it is cocaine found on Mr.  
16 Young is extremely relevant to establish his criminal  
17 knowledge and intent with respect to the matters charged  
18 in the indictment. He is in possession of cocaine, the  
19 indictment charges that he conspired to sell cocaine.  
20 Certainly it is inculpatory insofar as it is destructive  
21 of any suggestion that his appearance at Snookie's just  
22 prior to the three heroin transactions were purely innocent  
23 and his knowledge and familiarity with some of the other  
24 defendants was purely innocent.

25 MR. CHAPMAN: I don't follow that for one



2 moment. It is a very strained argument.

3 THE COURT: You do concede that the crime  
4 here requires the Government to introduce proof of specific  
5 intent, of knowledge?

6 MR. CHAPMAN: Specific intent, yes, of course,  
7 as to any crime, except in an isolated instance.

8 THE COURT: Under the circumstances I would think  
9 that would be relevant to this. I think you can argue any  
10 way you want to the jury relative to this, but at this  
11 point I am inclined to accept the Government's argument.  
12 I can see relevance and I can see materiality to this in  
13 view of the charges, in view of the time when this par-  
14 ticular property was taken from the person of your client.  
15 I think it would refute an argument that he had no know-  
16 ledge, I think it would refute an argument that he was  
17 involved here by pure happenstance as he walked into the  
18 barber shop to have his hair cut --

19 MR. CHAPMAN: That's not my client.

20 THE COURT: Well, to go into a bar for the  
21 purpose of socializing. I think the jury is entitled  
22 to draw inferences from the presence of this material  
23 which is related to the material charged to be involved in  
24 the conspiracy. Inasmuch as I believe the evidence is  
25 relevant and material to issues contained in the charges

here, your objection is overruled.

MR. HEMLEY: With respect to Mr. Van Leer's comments, the Government's position is that as an alleged member of the conspiracy he is liable for the criminal acts of the others done in furtherance of the conspiracy during the period of the conspiracy and that this is such an act.

THE COURT: I would suggest if I admit the evidence as to Mr. Young I would also be admitting it as to Mr. Owens subject, of course, to your proving the underlying conspiracy.

MR. HEMLEY: Naturally. Everything is subject to that.

THE COURT: If that fails, then the material is not admissible and at that point I think you would be in serious difficulty as far as the case which you are presenting is concerned.

MR. VAN LEER: Taking into consideration this subject that we are talking about now, it is an event which took place on June 21st. There is no evidence of any relationship or any pictures or anything after May 31st. It is nearly four weeks later we are talking about.

THE COURT: As I remember it, there is a transaction at this time, June 21st, which fell through. There

1 GWw50

Kuramoto-cross

2 has been a good bit of testimony as to that and I have a  
3 reaction that on or about June 21st there was another  
4 attempt to buy but the transaction fell through. They  
5 allege the conspiracy existed through this period at least  
6 up to the arrest. This is the arrest. I will permit the  
7 offer. Needless to say, each of you has your exception.

8 (In open court)

9 THE COURT: Objection overruled. The exhibit  
10 will be received.

11 (Government Exhibit 12-C for identification

12 received in evidence)

13 CROSS-EXAMINATION

14 BY MR. VAN LEER:

15 Q You say this is a 35 millimeter?

16 A Yes, I did.

17 Q Did you do anything with that film -- I with-  
18 draw the question.

19 The film shown today lasted for about twenty  
20 .minutes, is that correct?

21 A I didn't keep track of the time, sir.

22 Q How many reels did you take on May 31st?

23 A Are you speaking of the videotape?

24 Q Yes.

25 A Agent Edwards took one reel.

U.S. COURT OF APPEALS:SECOND CIRCUIT

U.S.A.,

Appellee,

against

OWENS,

Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF **NEW YORK**

ss.:

**I, Victor Ortega,** being duly sworn,  
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

**1027 Avenue St. John, Bronx, New York**  
That on the 28th day of February 1974 at Foley Square, New York

deponent served the annexed Appellant's Brief &amp; Appendix

upon

Paul J. Curran-U.S. Attorney Southern District  
Attorney for Appellee

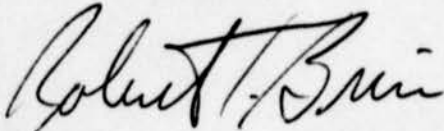
the in this action by delivering <sup>2</sup> true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein,

Sworn to before me, this 28th

day of February

19 74

Print name beneath signature

**VICTOR ORTEGA**


ROBERT T. BRIN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 81 - 0410850  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MARCH 30, 1975



